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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOHN MANCINI, et al.,  
Plaintiffs,  
vs.  
TICKETMASTER, et al.,  
Defendants.

Case Nos. CV 07-01459 DSF  
CV 08-07509 DSF

ORDER RE PLAINTIFFS'  
APPLICATION FOR ATTORNEYS'  
FEES, COSTS, AND INCENTIVE  
AWARDS

CRAIG AND JULIE JOHNSON,  
Plaintiffs,  
vs.  
TICKETMASTER, et al.,  
Defendants.

1           Class counsel have applied for an award of \$4,000,000 in attorneys'  
2 fees and expenses and for an incentive award of \$5,000 to each named plaintiff.  
3 Defendants do not oppose the application, and no objections to the application were  
4 received from settlement class members. A declaration from the mediator Antonio  
5 Piazza states that the fees were negotiated only after all other material terms of the  
6 settlement were agreed. (Dkt. # 493-8). For good cause shown, the Court finds and  
7 concludes as follows.

8           Class counsel have submitted evidence that they incurred \$195,833.84  
9 in expenses, exclusive of any flat fee charges such as Westlaw research. Class  
10 counsel also have computed that if a prime rate enhancement is applied from the  
11 end of the year in which the expenses were incurred until June 2013, the total is  
12 \$219,073.84. The Court makes no finding as to whether a prime rate enhancement  
13 would be appropriate, as counsel does not seek the enhancement. Class counsel  
14 has categorized the expenses according to the Uniform Task Management Billing  
15 System (UTMBS) codes. The Court has reviewed the expenses and finds them to  
16 have been reasonably incurred and to be compensable. *See Vincent v. Hughes Air*  
17 *West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977).

18           Class counsel requests a fee award of the balance remaining from the  
19 \$4,000,000, after reimbursement of the \$195,833.84 in costs, *i.e.*, of \$3,804,166.16.  
20 This requested fee equates to 16.5% of the reverting \$23 million common fund  
21 created by the settlement, which is below the Ninth Circuit benchmark of 25%. *See*  
22 *Williams v. MGM Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997).

23           Class counsel has submitted daily timesheets indicating just under  
24 8000 hours worked through July 15, 2013. (Additional fees have been incurred  
25 since that time.) Each time entry has been categorized according to the UTMBS  
26 codes, and totals have been provided for each code. Class counsel has computed its  
27 total lodestar as \$3,963,787.25 and stated that if a prime rate enhancement is  
28 applied from the end of the year in which the fees were incurred until June 2013,

1 the total lodestar is \$4,362,254.29. (The Court makes no finding as to whether a  
2 prime rate enhancement would be appropriate.) While most of the work  
3 performed, time spent, and rates charged appear to be reasonable, the Court finds  
4 that the lodestar is lower than the amount proposed by counsel.

5 All the time records are in tenth-of-an-hour increments, as required by  
6 this Court's standing order, except those of Dreier LLP, which contends that the  
7 standing order had not been adopted, or that Dreier LLP was not aware of it, prior  
8 to the time that Dreier LLP dissolved. Dreier LLP's position is irrelevant. The  
9 Court concludes that quarter-hour billing overstates time worked. It is possible that  
10 each entry for one-quarter hour should have been billed as one-tenth of an hour,  
11 each entry for one-half hour should have been billed as three-tenths of an hour, each  
12 entry for three-quarters of an hour should have been billed as six-tenths of an hour,  
13 and each entry for a full hour should have been billed as eight-tenths of an hour.  
14 Computing the Dreier LLP time on this basis results in a total lodestar of  
15 \$683,059.00 (reduced from \$705,211.25). Class counsel's total lodestar would then  
16 be \$3,941,635.00. The Court finds the lodestar cross-check supports the requested  
17 award.

18 Plaintiffs have also requested an incentive award to each named  
19 plaintiff. Incentive awards may be made to class representatives based on "(1) the  
20 risk to the class representative in commencing suit, both financial and otherwise;  
21 (2) the notoriety and personal difficulty encountered by the class representative; (3)  
22 the amount of time and effort spent by the class representative; (4) the duration of  
23 the litigation and; (5) the personal benefit (of lack thereof) enjoyed by the class  
24 representative as a result of the litigation. " *Van Vranken v. Atlantic Richfield Co.*,  
25 901 F. Supp. 294, 299 (N.D. Cal. 1995). The Court is not aware of cases holding  
26 that incentive awards may be made to named plaintiffs who are not approved as  
27 class representatives, or who have been found not to be appropriate class  
28 representatives. Plaintiffs point out that in *Radcliffe v. Experian Info. Solutions*

1 *Inc.*, 715 F.3d 1157 (9th Cir. 2013), the Ninth Circuit held that a class settlement  
2 agreement could not limit the right to seek incentive awards to those plaintiffs who  
3 actually signed the settlement and agreed not to object to it. *Id.* at 1165-66.  
4 Plaintiffs also point out that named plaintiffs who do not sign class settlement  
5 agreements or who object to the settlements would not typically be proposed or  
6 approved as class representatives. Plaintiffs argue that *Radcliffe* suggests that  
7 plaintiffs other than class representatives may be eligible for incentive awards, if  
8 they can otherwise demonstrate the relevant factors, such as risk undertaken, work  
9 performed, etc. Plaintiffs also contend that all the named plaintiffs incurred risks of  
10 liability for defendants' costs, had little to personally gain from the litigation, and  
11 remained involved for many years, including producing documents, appearing for  
12 deposition and submitting declarations. The Court does not find this argument to  
13 be persuasive. All named plaintiffs have been released from liability, and the Court  
14 concludes that plaintiffs who were found not to be adequate class representatives  
15 should not be compensated.

16 For the foregoing reasons, the Court approves Class counsel's  
17 application for an award of \$4,000,000 in attorneys' fees and expenses and of a  
18 \$5,000 incentive to Taylor Myers and Julie Johnson only. While the description of  
19 services performed and time spent by them was not adequate in itself, the Court is  
20 familiar with the extensive nature of this litigation and finds the amount to be  
21 appropriate.

22 **IT IS SO ORDERED.**

23  
24 August 2, 2013



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25 DALE S. FISCHER  
26 UNITED STATES DISTRICT JUDGE  
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